

**GROUP OF GOVERNMENTAL EXPERTS OF THE
HIGH CONTRACTING PARTIES TO THE
CONVENTION ON PROHIBITIONS OR
RESTRICTIONS ON THE USE OF CERTAIN
CONVENTIONAL WEAPONS WHICH MAY BE
DEEMED TO BE EXCESSIVELY INJURIOUS OR
TO HAVE INDISCRIMINATE EFFECTS**

CCW/GGE/2009-I/2
2 March 2009

Original: ENGLISH

**2009, First Session
Geneva, 16 – 20 February 2009
Item 9 of the Agenda
Adoption of procedural report**

PROCEDURAL REPORT

Submitted by the Secretariat

1. The Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) held at Geneva on 13 and 14 November 2008 decided, as contained in paragraph 34 of its Report (CCW/MSP/2008/4), that:

“The Group of Governmental Experts (GGE) will continue its negotiations, taking into account document CCW/GGE/2008-V/WP.1 and other present and future proposals by delegations, to address urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations.

The GGE should make every effort to conclude its negotiations as rapidly as possible and report to the next Meeting of the High Contracting Parties.

The work of the GGE will be supported by military and technical experts.

The GGE will meet for up to two weeks in 2009, from 16 to 20 February 2009 and subsequently, if required, from 14 to 17 April 2009.”

2. The Meeting of the High Contracting Parties decided, as contained in paragraph 38 of its Report (CCW/MSP/2008/4), to appoint Mr. Gustavo Ainchil of Argentina as Chairperson of the Group of Governmental Experts.

3. The first 2009 session of the Group of Governmental Experts was held at Geneva from 16 to 20 February 2009.

4. The following States Parties to the Convention participated in the work of the Group: Albania, Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Bosnia and

Herzegovina, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Holy See, Honduras, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, and Venezuela (Bolivarian Republic of).

5. The following Signatory States to the Convention also participated in the work of the Group: Afghanistan, Egypt and Nigeria.

6. The following States not parties to the Convention participated as observers: Azerbaijan, Côte d'Ivoire, Ghana, Guinea, Iraq, Kenya, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mozambique, Nepal, Oman, Qatar, Swaziland, Syrian Arab Republic, and Thailand.

7. The representatives of the United Nations Institute for Disarmament Research (UNIDIR), United Nations Mine Action Service (UNMAS), and United Nations Office for Disarmament Affairs (UNODA) took part in the work of the Group.

8. The representatives of the International Committee of the Red Cross (ICRC) took part in the work of the Group. The representatives of the European Commission and the Geneva International Centre for Humanitarian Demining (GICHD) also participated in the work of the Group.

9. The representatives of the following non-governmental organisations took part in the work of the Group: Action Group Landmine.de, Cluster Munition Coalition, Danchurchaid, Handicap International, Human Rights Watch, International Campaign to Ban Landmines (ICBL), Landmine Action (UK), Norwegian People's Aid, and Pax Christi.

10. On 16 February 2009, the session was opened by the Chairperson, Mr. Gustavo Ainchil of Argentina. He was assisted by: Navy Captain Roberto C. Juárez of Argentina as Chairperson of the Meetings of the Military and Technical Experts (MMTE); Ms. Angela Robinson of Australia as Friend of the Chair (FOC) on Cooperation and Assistance; Ms. Anesa Kundurovic of Bosnia and Herzegovina as FOC on Victim Assistance; Mr. Julio Fontes Laranjeira of Brazil as FOC on Storage and Destruction and on Transfers; and Lt. Col. Jim Burke of Ireland as FOC on Definitions. Mr. Peter Kolarov, Head of Section "Humanitarian Conventions", United Nations Office for Disarmament Affairs, Geneva Branch, served as Secretary of the Group and was assisted by Mr. Bantan Nugroho, Political Affairs Officer.

11. The Group held plenary meetings and informal open-ended meetings. At its first plenary meeting, on 16 February 2009, the Group adopted the agenda as contained in Annex I, and confirmed the Rules of Procedure as adopted and used by the Third Review Conference (CCW/CONF.III/11, Part III).

12. At its final plenary meeting, on 20 February 2009, the Group of Governmental Experts heard the report of the Chairperson. At the same plenary meeting the Chairperson of the Group submitted under his own responsibility a Chair's consolidated paper for consideration at the second 2009 session of the Group of Governmental Experts, as contained in Annex II.
13. At the same plenary meeting, the Group of Governmental Experts adopted the procedural report of its first 2009 session, as contained in document CCW/GGE/2009-I/CRP.1, as orally amended, which is being issued as document CCW/GGE/2009-I/2.

Annex I

AGENDA

As adopted during the first plenary meeting on 16 February 2009

1. Opening of the session of the Group of Governmental Experts
2. Adoption of the Agenda
3. Confirmation of the Rules of Procedure
4. Organization of work of the Group of Governmental Experts and its Meetings of Military and Technical Experts
5. Background documentation
6. Cluster munitions
7. Report of the Meetings of Military and Technical Experts
8. Any other issues
9. Adoption of procedural report

Annex II**CLUSTER MUNITIONS**
Consolidated Text**Article 1. General provision and scope of application¹**

1. In conformity with the Charter of the United Nations, the rules of International Humanitarian Law and other rules of international law applicable to them, the High Contracting Parties agree to comply with the obligations specified in this Protocol, both individually and in co-operation with other High Contracting Parties, to address the humanitarian impact caused by cluster munitions.

2. This Protocol shall not apply to mines, booby-traps and other devices as defined in Article 2 of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to this Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (the Convention).

3. This Protocol shall apply in all situations referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001, and to all situations resulting from conflicts referred to therein.

4. This Protocol shall not affect any rights or obligations Parties to the Convention on Cluster Munitions, done at Dublin, Ireland, on 30 May 2008 and opened for signature in Oslo, Norway, on 3 December 2008, have under that Convention.

Article 2. Definitions²

For the purposes of this protocol:

1. 'Cluster munition' means
 - (a) A conventional munition that is designed to disperse or release explosive submunitions, other than direct fire munitions, and includes those explosive submunitions; or
 - (b) A munition consisting of a container, affixed to an aircraft, which is designed to disperse or release multiple explosive submunitions, other

¹ Text as presented in CCW/GGE/2008-V/WP.1 as orally amended in paragraph 4.

² Text as presented in CCW/GGE/2008-V/WP.1/Add.1. It is intended to serve as an input for further consideration of the issue.

than direct fire munitions, in a single act, and includes those explosive submunitions.

2. 'Cluster munition' does not mean or include:
 - (a) munitions or submunitions designed to dispense flares, smoke, pyrotechnics, or chaff;
 - (b) munitions or explosive submunitions designed exclusively for an air defence role;
 - (c) munitions or submunitions designed to produce electrical or electronic effects;
 - (d) munitions that, in order to avoid indiscriminate effects and the risks posed by unexploded submunitions, have all of the following characteristics:
 - (i) each munition contains fewer than 10 explosive submunitions;
 - (ii) each explosive submunition weighs more than four kilograms;
 - (iii) each explosive submunition is designed to detect and engage a single target object;
 - (iv) each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) each explosive submunition is equipped with an electronic self-deactivating feature.
3. 'Explosive submunition' means a conventional munition, weighing less than 20 kilograms, that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact.
4. 'Failed cluster munition' means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered during an armed conflict, and which should have dispersed or released its explosive submunitions but did not do so as intended.
5. 'Unexploded submunition' means an explosive submunition which has been dispersed or released by, or otherwise separated from, a cluster munition during an armed conflict and has failed to explode as intended.
6. 'Abandoned cluster munitions' means cluster munitions or explosive submunitions that have not been used during an armed conflict, that have been left behind or dumped by a party to an armed conflict or in a situation arising directly from

an armed conflict, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use.

7. ‘Cluster munition remnants’ means failed cluster munitions, abandoned cluster munitions and unexploded submunitions.

8. ‘Military objective’ means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.

9. ‘Civilian objects’ are all objects, which are not military objectives as defined in paragraph 7 of this Article.

10. ‘Transfer’ involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over the cluster munitions, but does not involve the transfer of territory containing cluster munition remnants.

11. ‘Self-destruction mechanism’ means an incorporated or attached automatically-functioning mechanism, [which is in addition to the primary initiating mechanism of the munition, and] which secures the destruction of the munition into which it is incorporated or to which it is attached.

12. ‘Self-neutralisation mechanism’ means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.

13. ‘Self-deactivating’ means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition.

14. [‘Cluster munition victims’ means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.]

15. ‘Cluster munition contaminated area’ means an area known or suspected to contain cluster munition remnants.”

Possible new text for Article 1 resulting from changes to Article 2:

3. *This Protocol shall not apply to munitions that are exclusively designed as anti-ship munitions for use at sea.*

4. *The provisions of Articles 3, 5, 6, 7, 8, 9, 10, 11 & 12 of this Protocol shall apply to the munitions described in Article 2, paragraph 2 (d).*

Explanatory notes

1. This draft represents the best estimate of the FOC on definitions, resulting from the discussions during the open informal consultations during the week 3-7 November 2008, on the Article 2 text that would best facilitate the work of the Chairman.
2. Two issues discussed in the Article 2 consultations are primarily concerned with scope of application, i.e. the proposal on exclusion of anti-ship munitions and the previous paragraph 1 (d) which specifies which operative Articles should apply to munitions excluded from the definition of cluster munitions under former 1 (c) (v). Accordingly the FOC proposed re-locating these issues to Article 1 as new paragraphs 3 and 4 respectively. The text of former 1 (d) has been amended by adding Article 12 to the scope of the provision.
3. Paragraph 1, the definition of ‘cluster munition’ has been restructured by separating sub-paragraph 1 (c), which specifies what a cluster munition does not mean, from sub-paragraphs (a) and (b) which define a ‘cluster munition’.
4. In paragraph 1 (a) the phrase ‘*other than direct fire munitions*’ has been added to be consistent with 1 (b).
5. In paragraph 1 (b) the phrase ‘*munition consisting of*’ has been added at the start of the sentence as proposed by the UK and not opposed by any delegation.
6. New paragraph 2 is based on old paragraph 1 (c).
7. Old sub paragraph 1 (c) (iv) concerning anti-runway munitions has been deleted. This exclusion was opposed by a large number of delegations. As written in the text of 30 October 2008 it represented a very large potential loophole in the view of many, even if the exclusion was to be confined to munitions exclusively designed for anti-runway use. However, it is very likely that such munitions could also be used against targets other than runways such as roads, protective shelters and other infrastructure. The FOC decided therefore not to recommend such a broad exclusion at this time. Any such exclusion would have to be more tightly defined and also possibly addressed in the operative text to ensure that such munitions were not used against targets other than runways.
8. An upper limit of *20 kilograms* has been inserted into the definition of ‘explosive submunitions’ in new paragraph 3. Munitions of such a size are much less likely to present a humanitarian hazard than small bomblets and submunitions.
9. In new paragraph 3 it was the FOC’s assessment that the great majority of delegations could accept the deletion of the text in square brackets contained in the text of 30 October 2008.
10. In new paragraph 6 on ‘abandoned cluster munitions’ the phrase ‘*or in a situation arising directly from an armed conflict*’ has been added. This was a proposal by Canada which was not opposed.

11. The definitions of the terms ‘concentration of civilians’ and ‘feasible precautions’ have been deleted from this draft because these terms are not used in the operative articles of the Chair’s present text.
12. The text in square brackets in new paragraph 11 (old paragraph 12) remains as there was not sufficient agreement to delete or retain the text.
13. The definition of ‘cluster munition victims’ (new paragraph 14, old paragraph 15) is retained in square brackets pending further consultations on article 10.
14. The definition of ‘shelf life’ (old paragraph 17) has been deleted as the term shelf life is not used in the operative articles of the Chair’s present text.

Article 3. Protection of civilians, the civilian population and civilian objects³

1. In implementing this Protocol, each High Contracting Party and party to an armed conflict shall ensure full compliance with all applicable principles and rules of international humanitarian law.
2. Nothing in this Protocol shall be interpreted as detracting from, or otherwise prejudicing, other principles and rules of international humanitarian law.

Article 4. General prohibitions and restrictions⁴

1. It is prohibited for a High Contracting Party to use, develop, produce or otherwise acquire cluster munitions that do not meet the criteria in paragraph 2.
2. The prohibition in paragraph 1 shall not apply if:
 - (a) The cluster munition is capable of being delivered accurately to a pre-defined target area and each explosive submunition possesses one/two or more of the following safeguards that must effectively ensure with a high degree of reliability that unexploded submunitions will no longer function as explosive submunitions:
 - (i) a self-destruction mechanism/or an equivalent mechanism, including two or more initiating mechanisms;⁵
 - (ii) a self-neutralization mechanism;
 - (iii) a self-deactivating feature;

or

³ The content of this Article is presented as elements for discussion.

⁴ The content of this Article is presented as elements for discussion.

⁵ Some delegations expressed concern on this issue and discussions continue.

- (b) The cluster munition is capable of being delivered accurately to a pre-defined target area and incorporates a mechanism or design which, after dispersal, results in no more than 1% unexploded ordnance across the range of intended operational environments.

3. A High Contracting Party may defer compliance with the prohibition of use for a transition period not exceeding X years from the Protocol's entry into force for it. This deferral shall be announced by declaration at the time of its notification to be bound by this Protocol. In case a High Contracting Party is unable to comply with paragraph 1 of this Article within that transition period, it may notify a Conference of the High Contracting Parties that, it will extend this period of deferred compliance for a period of up to X additional years.

4. Notwithstanding a High Contracting Party's deferral, pursuant to paragraph 3, of the prohibition of use in paragraph 1, each High Contracting Party undertakes, immediately upon entry into force:

- (a) To use cluster munitions that do not meet the criteria in paragraph 2 only after approval by its highest-ranking operational commander in the area of operations/ by the appropriate politically mandated operational authority, in accordance with national procedures;
- (b) To use only cluster munitions with the lowest possible unexploded ordnance rate, consistent with military requirements;

5. Each High Contracting Party undertakes, immediately upon entry into force of the Protocol for it:

- (a) Not to develop new types of cluster munitions / or produce cluster munitions which do not meet the requirements of paragraph 2;
- (b) To take steps in any design, procurement, or production of cluster munitions to minimize the unexploded ordnance rate or incorporate additional safeguard mechanisms or designs;
- (c) To improve to the extent possible the accuracy of their cluster munitions and submunitions which meet the requirements of paragraph 2;
- (d) To complete an evaluation of the military requirements and remove the stocks of cluster munitions in excess of these requirements from active inventory as soon as possible and designate these stocks for destruction.

6. The obligations in this Article do not apply to cluster munitions acquired or retained in a limited number for the exclusive purpose of training in detection, clearance, and destruction techniques, or for the development of cluster munitions countermeasures.

7. The High Contracting Parties in a position to do so are encouraged, through bilateral or multilateral mechanisms established between them, to facilitate the exchange of equipment, material, and scientific and technological information that will lessen the humanitarian impact of cluster munitions.

Article 5. Storage and destruction⁶

Each High Contracting Party undertakes:

- (a) To remove all cluster munitions under its jurisdiction and control that do not meet the standards provided for in Article 4 (2) from its operational stocks, separate them from munitions retained for operational use, mark and safely secure them, in accordance with national procedures;⁷
- (b) To destroy or ensure the destruction of all cluster munitions under its jurisdiction and control that do not meet the standards provided for in Article 4 (2), as soon as feasible after the entry into force of this Protocol, starting no later than:
 - 5 years after the entry into force of the Protocol for the High Contracting Party; or
 - the end of the transition period referred to in article 4 if applicable to the High Contracting Party;
- (c) To create and/or maintain a stockpile surveillance and management program to ensure the operational quality and reliability of weapons permitted under this Protocol. In implementing this provision, the High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools, and databases within the Convention's framework and other relevant instruments and mechanisms.⁸

Article 6. Transfers⁹

1. It is prohibited for a High Contracting Party to transfer cluster munitions that do not meet the requirements of Article 4 (2).
2. A High Contracting Party may defer compliance with the prohibition of transfer for a transition period not exceeding X years from the Protocol's entry into force for it.
3. Notwithstanding a High Contracting Party's deferral, pursuant to paragraph 2, of the prohibition of transfer, each High Contracting Party undertakes, immediately upon entry into force:

⁶ The content of this Article is presented as elements for discussion.

⁷ Suggestions were made to link this provision to the transition period.

⁸ Suggestions were made to bring specific language reporting into this Article.

⁹ The content of this Article is presented as elements for discussion.

- (a) Not to transfer any cluster munition manufactured before 1990 except pursuant to patterns of cooperation/security cooperation agreements existing at the time of the entry into force of the Protocol;
- (b) Not to transfer any cluster munition that has been significantly degraded from its original specifications;
- (c) Not to transfer any cluster munition or submunition to any recipient other than a State or State agency authorized to receive such transfers;
- (d) To prevent unauthorized transfers, from areas under its jurisdiction or control, of any cluster munition or sub-munition;
- (e) To ensure that any transfer in accordance with this Article takes place in full compliance, by both the transferring and the recipient State, with the relevant prohibitions of this Protocol.

4. A High Contracting Party that has deferred the application of paragraph 1 shall, during the period of deferral, not transfer any cluster munition or submunition that does not meet the requirements of Article 4 (2), unless the recipient State agrees to apply this Protocol with respect to the transferred items.

5. This Article does not apply to transfers for the purpose of destruction, retrofitting in order to comply with the criteria set forth in Article 4, development of training in detection and clearance, and for the development of cluster munitions countermeasures.

Article 7. Clearance and Destruction¹⁰

1. Each High Contracting Party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all cluster munition remnants in territory under its control. In cases where a user of cluster munition which has become cluster munition remnants does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, inter alia technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party, including inter alia, through the United Nations system or other relevant organizations, to facilitate the marking and clearance, removal or destruction of such cluster munition remnants.

¹⁰ Text as presented in CCW/GGE/2008-V/WP.1.

2. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy cluster munition remnants in affected territories under its control. Areas affected by cluster munition remnants which are assessed pursuant to paragraph 3 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall take the following measures in affected territories under its control, to reduce the risk posed by cluster munition remnants:

- (a) Survey and assess the threat posed by cluster munition remnants;
- (b) Assess and prioritize needs and practicability in terms of marking and clearance, removal or destruction taking into account the impact from other explosive remnants of war and landmines;
- (c) Mark and clear, remove or destroy cluster munition remnants; and
- (d) Take steps to mobilize resources to carry out these activities.

4. In conducting the above activities, the High Contracting Parties and parties to an armed conflict shall take into account international standards, including the International Mine Action Standards.

5. The High Contracting Parties shall co-operate, where appropriate, both among themselves and with other states, relevant regional and international organizations and non-governmental organizations on the provision of inter alia technical, financial, material and human resources assistance including, in appropriate circumstances, the undertaking of joint operations necessary to fulfill the provisions of this Article.

Article 8. Recording, retaining and transmission of information¹¹

1. High Contracting Parties and parties to an armed conflict shall to the maximum extent possible and as far as practicable record and retain information on the use or abandonment of cluster munitions, to facilitate the rapid marking and clearance, removal or destruction of cluster munition remnants, risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

2. High Contracting Parties and parties to an armed conflict which have used or abandoned cluster munitions which may become cluster munition remnants shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties' legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through the United Nations or another mutually agreed third party or,

¹¹ Text as presented in CCW/GGE/2008-V/WP.1.

upon request, to other relevant organizations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of cluster munition remnants in the affected area.

Article 9. Protection of humanitarian missions and organizations from the effects of cluster munitions¹²

1. Each High Contracting Party and party to an armed conflict shall:
 - (a) Protect, as far as feasible, from the effects of cluster munition remnants, humanitarian missions and organizations that are or will be operating in the territory under the control of the High Contracting Party or party to an armed conflict and with that party's consent;
 - (b) Upon request by such a humanitarian mission or organization, provide, as far as feasible, information on the location of all cluster munition contaminated areas that it is aware of in territory where the requesting humanitarian mission or organization will operate or is operating.
2. The provisions of this Article are without prejudice to existing International Humanitarian Law or other international instruments as applicable or decisions by the Security Council of the United Nations which provide for a higher level of protection.

Article 10. Victim assistance¹³

1. High Contracting Parties and parties to the armed conflict shall, in accordance with domestic laws and procedures, as well as their obligations under applicable international law provide or facilitate the provision of appropriate and adequate assistance, including medical care, rehabilitation and psychological support and assistance for social and economic reintegration to cluster munition victims in territories under their jurisdiction or control. Each High Contracting Party and party to the armed conflict shall make every effort to collect reliable data with respect to cluster munition victims.
2. High Contracting Parties shall not discriminate against or among cluster munition victims, or between cluster munition victims and other victims of armed conflict/ERW *and other persons with disabilities*. Differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs, taking into account age and gender sensitivities.

¹² Text as presented in CCW/GGE/2008-V/WP.1.

¹³ Text as presented in CCW/GGE/2008-V/WP.1/Add.2.

3. In order to fulfill its obligations under this Article, each High Contracting Party shall take, among others, the following measures, as appropriate:

- (a) Assess the needs of cluster munition victims;
- (b) Develop, implement and enforce national laws and policies;
- (c) Develop, where it does not already exist, in accordance with national procedures, a national plan, with provision of adequate assistance, including timeframes to carry these activities, with a view to incorporating them within applicable national health, disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors in the field of assistance and rehabilitation of victims of cluster munitions;
- (d) Seek to mobilize national and international resources;
- (e) Closely consult with and involve cluster munition victims and their representative organizations;
- (f) Designate, in accordance with national procedures, a focal point within the government for coordination of matters relating to the implementation of this Article; and
- (g) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Explanatory notes

1. This new version of Article 10, as of 06.11.2008, represents the best estimate of the FOC on Victim Assistance, and the result of three open-ended informal plenaries held during the Fifth 2008 session of the GGE, as well as a number of informal consultations with interested delegations on the text of Article 10. Based on these discussions, the FOC has provided the Chairman with a new draft version of Article 10.

2. Solid progress has been achieved on Article 10 on Victim Assistance. All delegations have engaged constructively in the discussions that were held in a spirit towards finding solutions to remaining outstanding areas.

3. The text as it currently stands is almost cleared, with a small part still remaining in italics. In paragraph 1, two issues discussed involved a debate over the inclusion in the text of the wording “in accordance with domestic laws and procedures”. A significant number of delegations participated in the exchange of views on this point. One delegation proposed deletion of this text; however a large number of other delegations opposed this proposal. The FOC decided therefore not to recommend this text for exclusion, as the majority of delegations could accept the text as it stands. Another issue discussed in paragraph 1 was the proposal of one delegation to delete the wording “or facilitate the provision of”.

Similarly, as in the first case, a number of delegations opposed this proposal; therefore at this time the FOC decided not to recommend it for deletion.

4. In paragraph 2, the issue of non-discrimination against or among cluster munition victims or between cluster munition victims and other victims of armed conflict/ERW was discussed. One delegation proposed adding the wording “and other persons with disabilities”. At this stage, agreement on this issue could not be reached; therefore this part of the text still remains in italics. It is estimated that further consultations are needed on this particular issue.

Article 11. Co-operation and assistance¹⁴

1. In fulfilling its obligations under this Protocol, each High Contracting Party has the right to seek and receive assistance and each High Contracting Party in a position to do so shall provide such assistance in accordance with the provisions of this Article.

2. Each High Contracting Party in a position to do so shall provide assistance for the marking and clearance, removal or destruction of cluster munition remnants, and for risk education to civilian populations and related activities inter alia through the United Nations system, other relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

3. Each High Contracting Party in a position to do so shall provide assistance, including to develop national capacities, for the care and rehabilitation and social and economic reintegration of victims of cluster munitions and cluster munition remnants. Such assistance may be provided inter alia through the United Nations system, relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Where, after entry into force of this Protocol, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a High Contracting Party, each High Contracting Party in a position to do so shall urgently provide emergency assistance to the affected High Contracting Party.

5. Each High Contracting Party in a position to do so shall contribute to trust funds within the United Nations system, other relevant trust funds, or by other means, to facilitate the provision of assistance under this Protocol.

6. Each High Contracting Party shall have the right to participate in the fullest possible exchange of equipment, material, services and scientific and technological information other than weapons related technology, necessary for the implementation of this Protocol. High Contracting Parties undertake to facilitate such exchanges in accordance with national legislation

¹⁴ Text as presented in CCW/GGE/2008-V/WP.1.

and shall not impose undue restrictions on the provision of and receipt of clearance equipment and related technological information for humanitarian purposes.

7. Each High Contracting Party in a position to do so shall facilitate the development and use of technology and equipment for the detection and clearance of cluster munition remnants, including as appropriate through the use of trust funds established for that purpose or other means, in order to reduce the humanitarian impact of cluster munitions and cluster munition remnants.

8. Each High Contracting Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Protocol, in particular its humanitarian objectives, including through the timely collection and release of relevant data and information, and the facilitation of the entry and exit of assistance-related personnel, material and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.

9. Each High Contracting Party undertakes to provide information to the relevant databases on mine action established within the United Nations system, especially information concerning various means and technologies of clearance of cluster munition remnants, lists of experts, expert agencies or national points of contact on clearance of cluster munition remnants and, on a voluntary basis, technical information on relevant types of explosive ordnance.

10. High Contracting Parties may submit requests for assistance substantiated by relevant information to the United Nations, to other appropriate bodies or to other states. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations and non-governmental organizations.

11. In implementing the provisions of this Article, High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools and databases within the Convention on Certain Conventional Weapons framework and other relevant instruments and mechanisms.

12. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and in co-operation with the requesting High Contracting Party and other High Contracting Parties, recommend the appropriate provision of assistance. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required, including possible contributions from the trust funds established within the United Nations system.

13. High Contracting Parties in a position to provide assistance shall, where appropriate, cooperate to develop coordinated strategies for the effective and efficient provision of assistance.

Article 12. Consultations of High Contracting Parties¹⁵

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Protocol. For this purpose, Conferences of High Contracting Parties shall be held as agreed by a majority, but no less than eighteen High Contracting Parties.
2. The work of the Conferences of High Contracting Parties shall include:
 - (a) Review of the status and operation of this Protocol;
 - (b) Consideration of matters pertaining to cooperation and assistance and national implementation of this Protocol, including national reporting or updating on an annual basis; and
 - (c) Preparation for review conferences.
3. The costs of the Conferences of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 13. Compliance¹⁶

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this protocol by persons or on territory under its jurisdiction or control.
2. The measures envisaged in paragraph 1 of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, willfully kill or cause serious injury to civilians and to bring such persons to justice.
3. Each High Contracting Party shall require that its armed forces and relevant agencies, departments or ministries issue appropriate instructions and operating procedures and that its personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.
4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

¹⁵ Text as presented in CCW/GGE/2008-V/WP.1.

¹⁶ Text as presented in CCW/GGE/2008-V/WP.1.

Annex III**LIST OF DOCUMENTS**

of the First 2009 Session of the Group of Governmental Experts

CCW/GGE/2009-I/1	Provisional Agenda, submitted by the Chairperson
CCW/GGE/2009-I/2	Procedural Report, submitted by the Secretariat
CCW/GGE/2009-I/CRP.1	Draft Procedural Report, submitted by the Secretariat
CCW/GGE/2009-I/INF.1 and Corr.1	List of Participants
CCW/GGE/2009-I/MISC.1	Provisional List of Participants

The documents above are available in all official languages through the Official Document System of the United Nations at <http://documents.un.org>, and the official CCW website as part of the website of the United Nations Office at Geneva at <http://www.unog.ch/CCW>.
